

# **REQUEST FOR PROPOSALS NO. 07-001**

INFORMATIONAL DOCUMENT  
FOR  
PROPOSALS TO FURNISH  
HEALTH AND LIFE INSURANCE  
BENEFIT PLANS AND/OR ADMINISTRATIVE SERVICES  
FOR ACTIVE EMPLOYEES AND RETIREES

Issued by  
Hawaii Employer-Union Health Benefits Trust Fund  
City Financial Tower  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

State of Hawaii  
August 2006

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## **NOTICE TO OFFERORS**

The Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") seeks qualified offerors to provide and/or administer health and other benefit plans.

Sealed proposals for this project, RFP No. 07-001, will be received at:

Hawaii Employer-Union Health Benefits Trust Fund  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

Proposals will be accepted up to 4:00 p.m., Hawaii Standard Time ("HST"), September 19, 2006. Proposals received after this time will not be accepted. The Request for Proposals ("RFP") may be examined at or obtained from the office listed above. The RFP also is available on-line at [www.spo.hawaii.gov](http://www.spo.hawaii.gov) or [www.eutf.hawaii.gov](http://www.eutf.hawaii.gov).

For further information, call Jim Williams, Procurement Officer, at (808) 587-5434.

LEGAL AD DATE: August 7, 2006

## **SECTION ONE**

### **ADMINISTRATIVE OVERVIEW**

#### **1.01 INTRODUCTION**

This Request for Proposals ("RFP") is issued by the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"), an agency of the State of Hawaii ("State"). The purpose of this RFP is to select qualified and licensed contractors to provide and/or administer medical, vision, dental, prescription drug, chiropractic, and life insurance plans for eligible State and county employees, retirees, and their dependents. The EUTF may offer all such plans on a fully insured or self-insured basis or may offer a combination of insured and self-insured plans.

The EUTF was established by Act 88, 2001 Session Laws of Hawaii. Act 88 is partially codified as Chapter 87A, Hawaii Revised Statutes ("HRS"). Under Chapter 87A, the EUTF is authorized to design, provide, and administer health and other benefit plans for State and county employees, retirees, and their dependents. Since July 1, 2003, the EUTF has been providing health and other benefit plans to all State and county employees, retirees, and their dependents. The benefit plans include medical, prescription drug, chiropractic, vision, dental, and life insurance. The EUTF's plan year is July 1 through June 30 (fiscal year).

The EUTF is administered by a board of ten trustees ("Board") who are appointed by the Governor. Five trustees represent the employee-beneficiaries, one of whom represents retirees. These five trustees are selected by the Governor from a list of candidates provided by the exclusive employee representative organizations. The remaining five trustees, also appointed by the Governor, represent the public employers. The Board's responsibilities include determining the nature and scope of benefit plans, negotiating and entering into contracts with insurance carriers, establishing eligibility and management policies, and overseeing all EUTF activities. In several of these activities, the Board is assisted by a benefits plan consultant ("Consultant").

The EUTF's day-to-day operations are administered by an administrator appointed by the Board ("Administrator"). The Administrator is assisted in managing the EUTF by an assistant administrator, a financial management officer, and an information systems analyst. The EUTF staff has a total of 26 permanent and 3 temporary employees (including management staff and the Administrator). The EUTF is organized under three branches; Financial Services Branch, Information Systems Branch, and Member Services Branch. A health benefits program manager oversees the Member Services Branch and is supported by employees assigned to customer service duties to answer phones and e-mails from members and to handle all processing for retirees and process all active employee enrollment submissions. The financial management officer oversees the Financial Services Branch and is supported by accountants and account clerks who reconcile employee accounts, collect employer/employee contributions for health benefits and process all payments. The EUTF information system analyst is supported by one IT specialist and provides internal IT support services, HIPAA security responsibilities, and coordinates additional support services provided by Department of Accounting and General Services / Information and Communication Services Division.

In 2005, the State enacted Act 245, partially codified as Chapter 87D, HRS. Act 245 temporarily permits employee organizations to establish voluntary employees' beneficiary association ("VEBA") trusts to provide health and other benefits plans to their members, including retirees. The stated purpose of Act 245 is to establish a pilot program to evaluate the costs and benefits of VEBA trusts against the EUTF. Act 245 is scheduled to expire on July 1, 2008. To date, one employee organization has formed a VEBA trust and their members have been withdrawn from the EUTF health and other benefit plans.

The EUTF 2005 Annual Report is included as Appendix A of this RFP. EUTF Annual Reports are available on-line at [www.hawaii.gov/budget/LegReports/](http://www.hawaii.gov/budget/LegReports/).

## **1.02 CONTRACT PERIOD**

The term of any contracts resulting from this RFP shall commence on July 1, 2007 and will continue through June 30, 2009. At its sole discretion, the EUTF shall have: (a) two separate options to extend any such contracts for additional one (1) year periods, i.e., one option covering July 1, 2009 to June 30, 2010, and one option covering July 1, 2010 to June 30, 2011; and (b) the option of extending any such contracts for a single two (2) year period covering July 1, 2009 to June 30, 2011.

## **1.03 SIGNIFICANT DATES**

The Significant Dates set forth below represent the EUTF's best estimate of the anticipated schedule of events regarding this RFP. Offerors should use this timeframe for purposes of submitting their proposals. The EUTF reserves the right to change any date(s) as deemed necessary and in the best interest of the EUTF.

<u>Task</u>	<u>End Date</u>
RFP issued	8/07/06
Deadline for letters of intent	8/21/06 4:00 p.m. (HST)
Deadline for submission of written questions	8/21/06 4:00 p.m. (HST)
EUTF's response to written questions	9/07/06
Deadline for offerors to submit written proposals	9/19/06 4:00 p.m. (HST)
Discussions with priority-listed offerors (if necessary)	10/23-27/06
Best and final offers due (if any)	11/15/06
Contractor selection and award	11/29/06
Contract signed	12/15/06

**1.04 AUTHORITY**

This RFP is issued under the provisions of Chapter 103D, HRS, the applicable provisions of the Hawaii Administrative Rules ("HAR"), and Chapter 87A, HRS. All prospective offerors are charged with presumptive knowledge of all requirements of the cited authorities. Chapter 103D, HRS, and the HAR regarding Chapter 103D, HRS, are available on the State of Hawaii website at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Chapter 87A, HRS (Appendix K), and the administrative rules of the EUTF (Appendix L) are available on the EUTF website at [www.eutf.hawaii.gov](http://www.eutf.hawaii.gov).

**1.05 ORGANIZATION OF RFP**

This RFP is organized into five sections:

- |   |  |
|---|--|
| Section 1 Administrative Overview         | - Provides offerors with an overview of the procurement process and the terms and conditions of this solicitation.   |
| Section 2 Proposal                        | - Describes the required format and content for the offerors' proposals.   |
| Section 3 Scope of Work                   | - Provides offerors with specifications and a general description of the tasks to be performed, delineates offeror responsibilities, and defines deliverables (as applicable). |
| Section 4 Proposal Evaluation             | - Describes the Evaluation Committee that will evaluate the proposals and the criteria that will be used by the Evaluation Committee.  |
| Section 5 Contract and General Conditions | - Provides offerors with a copy of the standard contract form and general conditions that will be used for any contract resulting from this solicitation.                      |
| Appendices                                | - Provides offerors with information and forms pertaining to their preparation of proposals.   |

**1.06 ISSUING OFFICE AND CONTACT PERSON**

This RFP is issued by the EUTF. The issuing office ("Issuing Office") is:

Hawaii Employer-Union Health Benefits Trust Fund  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

The Procurement Officer and Contract Administrator for this procurement is:

Mr. Jim Williams, Administrator  
Hawaii Employer-Union Health Benefits Trust Fund  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813  
Telephone: (808) 587-5434  
Facsimile: (808) 586-2320

The Procurement Officer is the sole point of contact for this procurement.

#### **1.07 LETTER OF INTENT**

Persons interested in submitting a proposal in response to this RFP should submit a non-binding letter of intent in the form attached as Appendix B to the Issuing Office by the time and date specified in Section 1.03, Significant Dates (page 5). Failure to submit a letter of intent does not preclude an offeror from submitting a proposal in response to this RFP. However, answers to written questions, modifications, amendments, addenda, and clarifications to the RFP, and other official communications relating to the RFP will be sent only to persons and entities that have submitted a letter of intent.

#### **1.08 WRITTEN QUESTIONS AND RESPONSES**

If a prospective offeror wants a formal answer to questions concerning this RFP, the prospective offeror must submit such questions to the Procurement Officer by the time and date specified in Section 1.03, Significant Dates (page 5).

To facilitate a meaningful response, written questions must reference the page, section or paragraph, and line or sentence of the RFP to which the question relates. Questions may be submitted by facsimile machine provided they are received by the specified deadline. Such documents must contain pertinent information to identify the prospective offeror, its telephone and FAX numbers, this RFP's number, and be addressed to the Procurement Officer.

All official responses will be in writing and will be mailed to all prospective offerors who submitted a timely letter of intent. The EUTF is not responsible for delays or non-receipt of such responses or any communications by the prospective offerors.

The response to the prospective offerors' written questions shall be compiled, shall omit reference to the source(s) of the questions, shall be issued as an addendum to the RFP, and shall become a part of this RFP.

## **1.09 SUBMISSION OF PROPOSALS**

Each offeror may submit only one (1) proposal. Alternate proposals will not be accepted. However, offerors may submit a proposal that includes alternative types of plans or services, e.g., alternatives of insured plans or administration services for self-funded or self-insured plans, or alternatives of bundled plans or unbundled plans.

The original proposal must be single sided, unbound, and clearly marked, "Original." Twenty (20) copies of the proposal must be submitted, each copy marked, "Copy \_\_\_\_ of 20." Copies may be bound and double-sided. A diskette or CD of the proposal is also required. Proposals must be received and time-stamped by the Issuing Office no later than the time and date specified in Section 1.03, Significant Dates (page 5). Any proposal received after that time and date will be rejected.

All proposals become the property of the EUTF.

**FAXED PROPOSALS WILL NOT BE ACCEPTED OR CONSIDERED FOR AWARD.**

Proposals shall be mailed or hand delivered to the Issuing Office (see page 6 for address information). Also, three (3) copies of the proposal, in addition to the 20 copies above, shall be mailed to the EUTF Consultant: Garner Consulting at 35 N. Lake Avenue, Suite 720, Pasadena, CA 91101.

The outside cover of the package containing the proposals shall be marked:

Proposal Submitted in Response to  
RFP No. 07-001  
Hawaii Employer-Union Health Benefits Trust Fund

## **1.10 DISCUSSION AND PRESENTATIONS**

Discussions may be conducted with priority-listed offerors, i.e., offerors who submit proposals determined to be reasonably susceptible of being selected for award. Such offerors may be invited to make presentations to the Evaluation Committee to clarify their proposals, to promote understanding of the EUTF's requirements and the offeror's proposal, and to facilitate arriving at a contract that will provide the best value to the EUTF. Whether such discussions and presentations will be held will be at the discretion of the Evaluation Committee. Presentations, if any, will be held in Honolulu on the date(s) specified for discussions with priority-listed offerors in Section 1.03, Significant Dates (page 5). Offerors shall bear all responsibility for any and all costs of the presentations.

The Evaluation Committee may limit the priority-listed offerors to one or more priority lists as per HAR §3-122-53. The Evaluation Committee may also separately evaluate and create separate priority lists for the various types or categories of health and other benefit plans, e.g., fully insured plans, minimum premium plans, self-funded or self-insured plans, PPO medical plans, HMO medical plans, dual coverage plans, TRICARE supplemental plans, high deductible health plans, dental plans, vision plans, chiropractic plans, life insurance plans, etc.



The Evaluation Committee may accept proposals without discussions and may award or recommend the award of a contract without any presentations by the offerors. The Evaluation Committee may also reject proposals without discussions or presentations by the offerors. The Evaluation Committee may accept or reject proposals in one or more categories and conduct discussions with priority-listed offerors in other categories.

#### **1.11 BEST AND FINAL OFFERS**

Best and final offers may be requested by the Evaluation Committee. The Evaluation Committee will provide guidance and additional instructions at the time best and final offers are requested. Any best and final offers must be received by the Issuing Office at the time and date specified in Section 1.03, Significant Dates (page 5). If best and final offers are not requested by the Evaluation Committee, or if requested, and it is not submitted by an offeror, the offeror's previous submittal will be construed as the offeror's best and final offer. After best and final offers are received, final evaluations will be conducted for an award.

#### **1.12 COSTS FOR PROPOSAL PREPARATION**

Any and all costs incurred by an offeror in preparing and submitting a proposal, conducting discussions, and making presentations shall be at the offeror's sole expense and are the offeror's sole responsibility. This includes the cost of any site visits by an offeror.

#### **1.13 DISQUALIFICATION OF PROPOSALS**

The EUTF reserves the right to consider as acceptable only those proposals submitted in compliance with all the requirements set forth in this RFP and which demonstrate an understanding of the issues involved and the scope of work. Any proposal offering any other set of terms and conditions, or any terms or conditions contradictory to those included in this RFP, may be disqualified.

An offeror may be disqualified and the offeror's proposal may be rejected for any one or more of the following non-exclusive reasons as solely determined by the Evaluation Committee:

- A. Proposal is received after the established proposal submission deadline.
- B. Proposal is not properly completed or signed or fails to include notarized evidence of authority of the officer submitting the proposal to submit such proposal.
- C. Proposal is submitted on a form other than that furnished by the EUTF or an exact copy thereof.
- D. Failure to possess proper licenses, facilities, equipment or sufficient professional experience to perform the services as proposed.

- E. Proposal shows any noncompliance with applicable laws, alterations of form, conditional proposals, incomplete proposals, un-initialed erasures, other defects, or prices which are obviously unbalanced.
- F. Failure to submit any required samples of reports or other documents.
- G. Failure to submit written answers to any questions from the Evaluation Committee or Procurement Officer.
- H. Being in arrears on existing contracts with the State, having defaulted on a previous State contract or being delinquent on tax payments due to the State of Hawaii.
- I. Adding on by the offeror of any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- J. If there is evidence to the Evaluation Committee's sole satisfaction that collusion exists among offerors, any or all proposals may be rejected and the participants in such collusion shall be barred from future proposal submissions.

#### **1.14 RFP AMENDMENTS**

The EUTF reserves the right to amend this RFP at any time prior to the closing date for best and final offers.

#### **1.15 CANCELLATION OF RFP; REJECTION OF PROPOSALS**

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interests of the EUTF.

#### **1.16 SELECTION AND EXECUTION OF CONTRACT**

Award, if any, shall be made to the responsible offeror or offerors whose proposals are the highest scoring and most responsive to the RFP. If award is made, each successful offeror will be required to enter into a formal written contract with the EUTF. A copy of the required form of contract and applicable General Conditions can be found in Section Five of this RFP. The RFP and the successful proposal will be incorporated in the resulting contract by reference. To the extent that the successful proposal conflicts with the RFP, the terms of the RFP shall govern unless otherwise agreed upon by the EUTF in the contract. HRS Chapter 87A and the EUTF's administrative rules, as they may be amended from time to time, also shall be a part of the resulting contract.

Each successful offeror that enters into a contract that results from this RFP is hereinafter referred to as the "contractor".

## 1.17 RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this RFP, offeror shall, upon award of contract, furnish proof of compliance with the requirements of §103D-310, HRS, and §3-122-112, HAR. Due to the time required to obtain the required certificates of compliance, it is highly recommended that the certificates be submitted with the offeror's proposal.

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. One of the following:
  - a. Be a "Hawaii business"; or
  - b. Be a "compliant non-Hawaii business".

A "Hawaii business" is registered and incorporated or organized under the laws of the State of Hawaii ("State").

A "compliant non-Hawaii business" is not incorporated or organized under the laws of the State but is registered to do business in the State.

HRS Chapter 237 tax clearance requirement for award. Instructions are as follows:

Pursuant to §103D-328, HRS, the offeror selected for an award of contract shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the EUTF.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 10/2004) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://www.state.hi.us/tax/alphalist.html#a>  
DOTAX Forms by Fax/Mail: (808) 587-7572  
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX:	(808) 587-1488
IRS:	(808) 539-1573

The application for the clearance is the responsibility of the offeror, and must be submitted directly to the DOTAX or IRS and not to the EUTF. However, the tax clearance certificate shall be submitted to the EUTF.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Instructions are as follows:

Pursuant to §103D-310(c), HRS, the offeror selected for an award of contract shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the EUTF. A photocopy of the certificate is acceptable to the EUTF.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR#27 which is available at [www.dlir.state.hi.us/forms/ApplicationforCertificateofCompliance.pdf](http://www.dlir.state.hi.us/forms/ApplicationforCertificateofCompliance.pdf) or at the neighbor island DLIR District Offices. The DLIR will return the form to the offeror who in turn shall submit it to the EUTF.

The application for the certificate is the responsibility of the offeror, and must be submitted directly to the DLIR and not to the EUTF. However, the certificate shall be submitted to the EUTF.

Compliance with Section 103D-310(c)(1) and (2), HRS. Pursuant to section 3-122-112, HAR, the offeror selected for an award of contract shall be required to submit a CERTIFICATE OF GOOD STANDING (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the EUTF. A photocopy of the certificate is acceptable to the EUTF.

To obtain the Certificate, the offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

On-line business registration and the Certificate are available at [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com). To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the EUTF as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award or any such award may be cancelled.

Final Payment Requirements. Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two

months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), will be required for final payment. A copy of the Form is available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the Hawaii Public Procurement Code, Chapter 103D, HRS menu.

## **1.18 FUNDING**

Execution of any contract between the EUTF and the successful offeror is contingent upon the availability of funds. In addition, any contract resulting from this RFP shall be enforceable only to the extent of the availability of funds. No damages or interest shall accrue against the EUTF or the State as a result of the non-availability of funds.

Depending on the prices proposed, the current level of funding may be insufficient to support the entire scope of work. If the current level of funding is insufficient to support the entire scope, the EUTF reserves the right to negotiate with the offeror(s) to reduce the price(s) and/or the scope of work, and to select specific sections described in the Scope of Work (Section 3 of this RFP) for inclusion in the resulting contract. Any such contract will be written to include only those portions of the Scope of Work selected by the EUTF and/or may be written to be contingent upon the EUTF receiving further funding. However, the evaluation of the offerors' proposals shall be based on those proposals' satisfying the entire Scope of Work regardless of whether the current level of funding is insufficient for the entire Scope of Work.

EUTF also reserves the right to subsequently select additional sections of the Scope of Work to be completed by the contractor as additional funds become available. The price of any additional sections shall be at the prices proposed by offeror in its proposal, subject to any modifications agreed upon between the EUTF and the contractor. The existing contract will then be amended to include the selected additional sections. See Section 3.02, item 15 of this RFP for additional information on availability of funds.

## **1.19 EVERSON LAWSUIT**

A lawsuit was filed against the State of Hawaii, EUTF, and others on June 30, 2006, i.e., Marion Everson, et al. v. State of Hawaii, et al., Civil No. 06-1-1141-06, First Circuit Court, State of Hawaii. The lawsuit claims that the EUTF's current health plans for retirees do not provide benefits that are substantially equal to the benefits provided under the EUTF's current health plans for active employees. Among other things, the lawsuit seeks injunctive relief requiring the State and EUTF to provide health benefits to retirees that are substantially equal to the health benefits provided to active employees. While the EUTF does not believe the lawsuit to be meritorious, the EUTF reserves the right to renegotiate any awards of contract and/or contracts resulting from this RFP if necessary to comply with any orders or judgments resulting from this lawsuit.

## 1.20 SPECIAL CONDITIONS

The following Special Conditions will supplement the General Conditions of the Contract (Section 5).

1. Certificate of Authority/License. Prior to the effective date of the contract and during the entire term of the contract, the contractor shall obtain and maintain all certificates of authority, licenses, and other approvals necessary to lawfully provide all benefit plans required under the contract and/or to lawfully provide all services required under the contract. By accepting the award of contract, contractor certifies that: (a) it has all certificates, licenses, and approvals necessary to lawfully provide all benefit plans and/or services required under the contract; and (b) if applicable, that its benefit plans comply with all applicable federal, state, and county laws.
2. Compliance with EUTF Laws and Rules. The contractor shall comply with: Chapter 87A, HRS, as the same may be amended from time to time; all rules, policies, standards, procedures, and directives adopted by the Board; and all policies, standards, procedures, and directives of the Administrator. The contractor shall be bound by the Board's interpretation of Chapter 87A, HRS, and the EUTF's rules, policies, standards, procedures, and directives.
3. Records. Consistent with industry standards and practices, the contractor shall maintain reasonable records pertaining to the contractor's provision of all the benefit plans and/or services required under the contract and contractor's performance of the contract including, but not limited to: (a) enrollment and eligibility records; (b) claims records; and (c) financial and accounting records showing all financial transactions pertaining to contractor's provision of benefit plans and/or services, contractor's performance of the contract, and all payments received or due to contractor under or relating to the contract. Unless otherwise agreed by the EUTF, all such records shall be kept and maintained in the State of Hawaii. Except as otherwise required by law, contractor shall maintain all records for at least three (3) years from the date of final payment under the contract. Records which relate to an appeal, litigation, or settlement of claims arising out of the contract shall be retained by contractor for at least three (3) years after the subject appeal, litigation, or claim has been disposed of or otherwise resolved.
4. Accounting. Except as otherwise required by law, the contractor's accounting procedures and practices shall conform to generally accepted accounting principles consistently applied and all fees and costs applicable to the contract shall be readily ascertainable from the contractor's records.
5. Inspections and Audits. At all times that it is required to maintain records under the contract, contractor shall make such records available at its local office for inspection or audit by authorized representatives of the EUTF, the State Auditor, and/or the State Comptroller. Such inspections and audits may include, but are not limited to: (a) claims audits; (b) audits relating to the performance standards and guarantees required under the contract; (c) audits relating to contractor's

performance of the contract and compliance with the contract's terms and conditions; and (d) the contractor's claimed fees, costs, and expenses. To the extent that contractor proposes to use or uses any subcontractors to fulfill its obligations under the contract, those subcontractors must agree to abide by the record keeping, accounting, and audit requirements of the contract.

6. Liquidated Damages. In the event of any breach of the contract by contractor, liquidated damages shall be assessed against contractor in the sum of Five Thousand and No/100 Dollars (\$5,000) per calendar day until the breach is remedied by contractor.
7. Insurance. At its sole cost and expense, the contractor shall obtain and keep in force throughout the entire term of the contract and any extensions thereof, the following types of insurance, in the minimum amounts specified and in the form hereinafter provided for:
  - (a) An insurance policy or policies that cover claims resulting from the contractor's negligent or willful acts, errors or omissions, breach of contract, breach of fiduciary or other duty, violation of statute or other law, in providing services under the contract. The policy or policies shall have limits of liability, per occurrence and in the aggregate, in amounts that are reasonably satisfactory to the Board. Initially, the insurance policy must have limits of liability in the amount of at least FIVE MILLION AND NO/100 DOLLARS (\$5,000,000), per occurrence and in the aggregate. The insurance policy shall be endorsed to provide that it is primary insurance and not contributing or excess over any coverage that the EUTF, Board or State of Hawaii may carry.
  - (b) A fidelity bond, commercial crime policy, or other equivalent insurance that provides insurance coverage or similar protection to the EUTF against forgery, theft, robbery, fraud, dishonest and criminal acts committed by any of the contractor's employees that causes the EUTF to sustain monetary loss. The limits of such bond or policy shall be FIVE MILLION AND NO/100 DOLLARS (\$5,000,000) per occurrence and in the aggregate.
  - (c) Any and all other insurance that is required by applicable law and that is reasonably necessary in order for contractor to perform the work and services required under the contract. The insurance policies shall have limits of liability, per occurrence and in the aggregate, in amounts that are reasonably satisfactory to the Board, as measured by what a reasonably prudent trustee would require of a contractor in similar circumstances.

The adequacy of the coverage afforded by the contractor's insurance shall be subject to review by the Board, from time to time, and if it appears that a reasonably prudent trustee, operating a trust fund similar to that operated by the Board, would require an increase in the limits of liability of such insurance, contractor shall to that extent take all necessary actions to increase such limits.

All the required insurance shall be carried with insurance carriers that have a general policyholder's rating of not less than A and a financial rating of no less

than VII in the most current Best's Insurance Reports. If the Best's ratings are changed or discontinued, the parties shall agree to an equivalent method of rating insurance companies.

Throughout the entire term of the contract, the EUTF, the Board and its trustees shall be named as additional insureds on all the insurance policies required hereunder. At the commencement of the contract, the contractor shall provide the Board with certificates of insurance showing that it is carrying all the insurance required hereunder. At or prior to the expiration of all insurance policies required hereunder, the contractor shall provide the Board with certificates of insurance showing the renewal or replacement of such insurance policies. All policies of insurance shall provide that the Board will be given thirty (30) days notice in writing in advance of any cancellation, lapse or reduction in the amount of insurance.

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

- (1) "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the Hawaii Employer-Union Health Benefits Trust Fund, 201 Merchant Street, Suite 1520, Honolulu, Hawaii 96813."
- (2) "The State of Hawaii is added as an additional insured with respect to operations performed for the State of Hawaii."
- (3) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon contractor's execution of the contract, the contractor agrees to deposit with the State certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate.

Upon request by the State, contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the contractor.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, contractor shall be obliged for the full and total amount of any



damage, injury, or loss caused by negligence or neglect connected with this contract

8. Transition Procedures. At no cost to the EUTF, the contractor shall comply with the following provisions upon receipt of a notice of termination or upon the expiration of the contract:
- (a) As directed by the EUTF, the contractor shall terminate or assign to the EUTF or its designee any outstanding orders or contracts that relate to contractor's performance of the contract.
  - (b) The contractor shall transfer title and deliver to the EUTF or its designee any and all completed or partially completed goods, materials, reports, information, or other work product of the contractor that were made under the contract or as part of the contractor's performance of the contract.
  - (c) As directed by the EUTF, the contractor shall destroy and/or deliver to the EUTF or its designee all confidential or proprietary documents, information, and data that contractor has received under the contract and all copies thereof.
  - (d) The contractor shall provide to the EUTF or its designee all records, documents, information, and data reasonably necessary to allow the EUTF or its designee to continue to provide and/or administer, without interruption, all health and other benefit plans to EUTF beneficiaries, and to comply with all federal, state, and other legal requirements to which the EUTF is subject. Such records, documents, information, and data shall include, but not be limited to, eligibility information and data, claims experience or history data, and administrative records.
  - (e) As directed by the EUTF, the contractor shall handle retroactive enrollments for persons who should have been enrolled prior to the effective date of the termination or expiration, the run-off of all claims incurred prior to the effective date of the termination or expiration, and any other requirements of the contract that apply to the period of time prior to the effective date of the termination or expiration.
  - (f) The contractor shall provide the EUTF with a final accounting of claims, premiums, reserves, and retention covering the last unreported period of time up to and including the effective date of termination or expiration, a final monthly operation report, a final plan performance and paid accounting report, and a final quarterly report on financial operations and performance standards.

## **SECTION TWO**

### **PROPOSAL**

#### **2.01 PROPOSAL PREPARATION**

This section of the RFP describes the proposal format, content, and requirements. The intent is to standardize proposals to a degree where comparisons may be made among the proposals using equitable measurements. This is not an attempt to limit the contents of any proposal and an offeror may include any additional information that it deems to be pertinent and that it believes would assist the Evaluation Committee in its review of the offeror's proposal. The proposal should be written in a clear, straightforward way, describing the offeror's response to the requirements of this RFP. The proposal should not include materials that are not essential to the proposal's utility and clarity.

Each responsive proposal will be reviewed by the Evaluation Committee (or its designees) for conformity with the requirements of the RFP. If asked for additional information by the Procurement Officer, offerors shall respond within two (2) business days, unless otherwise directed by the Procurement Officer.

Each proposal shall contain the following sections:

Section I:	Proposal Transmittal Letter
Section II:	Offer Form OF-1
Section III:	Executive Summary
Section IV:	Benefit Plans, Responses to Questions
Section V:	Organization and Staffing
Section VI:	Offeror Background and Experience
Section VII:	Price – Offer Form OF-2
Section VIII:	Certification
Attachment A:	Staff Resumes
Attachment B:	Offeror's References
Attachment C:	Offeror's Tax Clearance
Attachment D:	Wage Certification

#### **2.02 PROPOSAL TRANSMITTAL LETTER**

A transmittal letter must be included as part of the proposal. The transmittal must be on the offeror's business letterhead, signed by an individual authorized to legally bind the offeror, dated, notarized, and be affixed with the offeror's corporate seal, if any. Evidence shall be submitted showing the individual's authority to bind the offeror, e.g., corporate resolution, bylaws, etc.

The proposal transmittal letter shall also contain the following:

- A. Contact Person. The letter shall include the name of a duly authorized person that the EUTF is to contact regarding the offeror's proposal, and that person's address, telephone/fax numbers, and e-mail address.
- B. Legal Entity. A statement indicating that the offeror is an individual, partnership, corporation, or other legal entity. If the offeror is a partnership, corporation, or other legal entity, the letter must state: (1) the date offeror was incorporated or organized; (2) the place where the offeror was incorporated or organized; (3) the offeror's principal place of business; (4) all states where the offeror is authorized to transact business; and (5) the names of all the offeror's parent, affiliate, and subsidiary organizations.
- C. Terms and Conditions. A statement that the offeror understands and will comply with all terms and conditions of the RFP (including the General Conditions). If an offeror does not plan to comply with any of the terms or conditions of the RFP, this must be stated and all exceptions listed and fully described. If an offeror proposes any additional terms and conditions (including group plan service agreements, benefit schedules, prescription drug riders, or other similar documents), this must be stated and copies of all such additional terms and conditions shall be provided as part of the proposal.
- D. Assumptions or Constraints. A statement on whether the proposal contains any assumptions or constraints and identifying and describing each such assumption and constraint. If neither assumptions nor constraints are included in the offeror's proposal, a statement to that effect must be made.
- E. Deviations. If the proposal deviates from the specifications or requirements of the RFP, a statement must be included identifying and describing each such deviation. If no deviations are included in offeror's proposal, a statement to that effect must be made.
- F. Non-Discrimination. A statement of affirmative action stating that the offeror does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap or disability must be included.
- G. Subcontracting. A statement that the services and work described in the RFP shall be performed by the offeror and shall not be subcontracted or assigned without the prior written approval of the Contract Administrator.

## **2.03 OFFER FORM OF-1**

Include a signed Offer Form OF-1 Appendix D with the exact legal name of the offeror as registered with the Department of Commerce and Consumer Affairs, if applicable, offeror's address, and the name, mailing address, and telephone and fax number (s) of the person the EUTF should contact regarding offeror's proposal.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offeror's proposal may be rejected unless accompanied by other material, containing an original signature that shows that the proposal is legally binding on the offeror.

#### **2.04 EXECUTIVE SUMMARY**

The executive summary shall clearly and concisely summarize and highlight the contents of the proposal in such a way as to provide the Evaluation Committee with a broad understanding of the entire proposal.

#### **2.05 PROJECT APPROACH**

Provide a description of the offeror's approach and methodology to accomplish the scope of work as set forth in this RFP. Include responses to the questions presented in Appendix C of this RFP that are applicable to offeror's proposal.

#### **2.06 ORGANIZATION AND STAFFING**

This section shall include information on the experience and professional qualifications of the offeror's staff who will be assigned to perform the work and services required under the RFP (the "project"). Include response to the questions presented in Appendix C (General Questionnaire, A, 1-3) of this RFP.

Included in Attachment A, STAFF RESUMES, of the proposal shall be a resume of each individual who will be assigned to this project. Resumes shall highlight experiences on specific projects that may be relevant to this project. Resumes should contain information relating to each person's experience, education, and skills. This should include, but is not limited to, names of employers, position titles, educational institutions attended, degrees and certifications obtained, and membership in professional associations.

#### **2.07 OFFEROR BACKGROUND AND EXPERIENCE**

This section shall include a list of similar clients. The list should include large (over 5,000 employees) clients, government clients, and clients in Hawaii.

Included in Attachment B, OFFEROR'S REFERENCES, of the proposal shall be responses to the questions presented in Appendix C (General Questionnaire, A, 7) of this RFP. Offeror grants the EUTF authorization to contact any of the offeror's previous clients, including these client references, to evaluate the offeror and its work.

Included in Attachment C, OFFEROR'S TAX CLEARANCE, of the proposal shall be an original or certified copy of a tax clearance issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). These must be submitted with the offeror's proposal. The tax clearance shall be obtained on the two-part Tax Clearance Application (Form A-6) that combines DOTAX and IRS tax clearances.

Tax clearance submitted with a sealed offer must be valid on the date that it is submitted or any date thereafter up to the proposal due date. A valid tax clearance received with an offer will remain valid for the contract award.

## **2.08 PRICE**

The offeror's quoted price shall be a fixed cost for each year of the two-year term of the contract. The offeror's quoted price for each of the two optional one-year extensions of the contract and for the optional two-year extension of the contract shall include a maximum trend rate and retention rate as is more particularly described in Section 3.08, item 16 of this RFP. The offeror's quoted prices shall include all premiums, compensation, fees, costs, expenses, and other amounts (including all applicable taxes) that offeror will charge the EUTF if it is awarded a contract resulting from this RFP. The offeror shall submit its price quotations on Rate Proposal Forms (Appendix D).

Payments to each contractor shall be per Section 103-10, HRS. If an offeror desires any additional terms or provisions regarding the method of payment, the terms or provisions must be set forth in the offeror's proposal.

## **2.09 CERTIFICATION**

The proposal shall include a certification that:

The quoted prices and other parts of the proposal were arrived at independently, without consultation, communication, or agreement with any other offeror or competitor.

Unless otherwise required by law, the quoted prices and other parts of the proposal that were submitted have not been knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor prior to the award of the contract.

No attempt was made or will be made by each offeror to include any other person or firm to submit or not to submit a price for the purpose of restricting competition.

## **2.10 OFFER GUARANTY**

No offer guaranty is required for this RFP.

## **2.11 PERFORMANCE AND PAYMENT BONDS**

No performance bond is required for this RFP.

## **2.12 CONFIDENTIAL INFORMATION**

The offerors' proposals and all information, data, and other material provided by the offeror to the State shall be subject to the Uniform Information Practices Act, Chapter 92F, HRS. The offeror shall designate in writing to the Procurement Officer those portions of its proposal that contain trade secrets or other proprietary data that are to remain confidential subject to Section 3-122-58, HAR. The offeror shall state in its written communication to the Procurement Officer, the reasons for designating the material as confidential. The offeror shall submit the material designated as confidential in such manner that the material is readily separable from the rest of offeror's proposal in order to facilitate inspection of the non-confidential portion of the proposal.

Offerors should note that they cannot designate their prices as confidential. Following award of the contract, all offerors' proposed prices will not be withheld from disclosure as confidential.

## **SECTION THREE**

### **SCOPE OF WORK**

#### **3.01 OBJECTIVE**

The EUTF is requesting proposals to provide insured medical, prescription drug, dental, chiropractic, vision, and life insurance benefit plans. The EUTF is considering self-funded or self-insured medical, prescription drug, dental, chiropractic, and vision plans and is also requesting proposals to administer such plans. The EUTF's current plans are described in Appendix C and Appendix M.

The EUTF also is considering taking a "managed competition" approach in which multiple contractors are selected for each category of benefits, e.g., multiple medical plans, multiple prescription drug plans, etc. Under this approach, EUTF participants would be allowed to choose plans based on price, service, network, and other factors. With respect to bundled plans, this approach could involve the EUTF offering such plans on a non-exclusive basis, e.g., EUTF participants could choose to enroll in a bundled plan or in one or more alternative unbundled plans. The EUTF reserves the right to award contracts for bundled plans on either an exclusive or non-exclusive basis.

Each offeror is free to submit proposals on plan designs that differ from the plan designs described in the questionnaires in Appendix C and/or to bundle any plan designs with other plans, such as medical with prescription drug.

#### **3.02 SPECIFICATIONS**

##### **1. Instructions**

This Section sets out specifications for the benefit plans and services that the EUTF is seeking through this RFP. Unless an offeror expressly and specifically makes an exception to or identifies a deviation from these specifications in its proposal, the offeror's proposal will be deemed to offer to meet and abide by all specifications set forth in this Section. If an offeror proposes an exception to or a deviation from any of the contractual requirements set forth in this RFP, the offeror's proposal must specifically and completely describe and delineate that exception or deviation. Otherwise, the offeror's proposal will be deemed to accept and agree to all the contractual requirements. The EUTF is under no obligation to agree to any exception or deviation proposed by an offeror, and will take any such exceptions and deviations into account in evaluating the offeror's proposal.

As noted above, the EUTF is considering taking a "managed competition" approach. Therefore, you should assume that your proposed plan may not be the only plan offered within a category of benefits. If you can offer lower rates provided that yours is the only plan offered within a category, please make additional copies and label the forms "Exclusive". For this purpose, HMO, PPO,

dual-coverage plans, prescription drug, dental, vision, chiropractic, and life insurance should be considered separate categories.

This Section also identifies questionnaires (Appendix C) that each offeror must answer in its proposal. Each offeror must answer the questions in the General Questionnaire. Offerors proposing Preferred Provider Organization (“PPO”) plans or some alternative to such plans, including administration of self-insured PPO plans, must answer the questions in the PPO Plan Questionnaire. Offerors proposing to offer Prescription Drug plans or some alternative to such plans, including administration of self-insured Prescription Drug plans, must answer the questions in the Prescription Drug Plan Questionnaire, etc. The EUTF will take into account any failure of an offeror to clearly and adequately provide answers to the questionnaires.

2. Basic Services

Contractor shall provide the benefits and services that are: (1) required under this RFP; (2) proposed by contractor and accepted by the EUTF; and (3) otherwise required under the contract between the contractor and the EUTF.

3. Customer Service Office

During the entire term of the contract, the contractor shall have and maintain a customer service office located in the State of Hawaii. Personnel, systems, and equipment at the customer service office shall be reasonably sufficient to provide all the customer services proposed by contractor and required under the contract.

4. Key Personnel

Within thirty (30) calendar days of the award of contract, the contractor shall notify the EUTF in writing of the names, titles, business addresses, e-mail addresses, telephone numbers, and areas of responsibility of all of its authorized representatives. The authorized representatives shall be available to answer questions from or hold discussions with the Board or its designee, the Administrator, EUTF staff, the Consultant or the Attorney General’s office with respect to contractor’s benefits plans, contractor’s performance of the contract, or any matter pertaining to the EUTF. The contractor shall give the EUTF at least ten (10) days notice in advance of any change in the authorized representatives.

Among the authorized representatives, contractor shall designate a contract liaison officer who shall be responsible to the EUTF for contractor’s performance of the contract. The contract liaison officer shall attend all meetings called by the Board or its designee, the Administrator, or the Consultant.

5. Eligibility

Eligibility of EUTF employee-beneficiaries and dependent-beneficiaries for enrollment in and coverage by contractor’s benefit plans shall be determined under HRS chapter 87A and the EUTF’s rules. Contractor shall be bound by the



EUTF's determinations regarding eligibility of EUTF employee-beneficiaries and dependent-beneficiaries.

Contractor shall accept enrollment and cancellation dates as stated in EUTF transmissions, reports, or files. Contractor shall accept enrollment eligibility dates for Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") coverage in accordance with federal law as determined by the Administrator and the public employers' departmental personnel officers.

Contractor shall waive all pre-existing conditions provisions and all actively at work and dependent deferment requirements for EUTF employee-beneficiaries and dependent-beneficiaries to be covered on the effective date.

6. Processing Enrollments, Cancellations and Terminations

Twice a month (semi-monthly), the EUTF will provide a Health Insurance Portability and Accountability Act of 1996 ("HIPAA") compliant electronic data transmission that shows new enrollments, cancellations, terminations, and other changes applicable to contractor's benefits plan(s). Subject to the following, contractor shall process such enrollments, cancellations, terminations, and changes in a timely manner:

Within fifteen (15) calendar days of the electronic data transmission, a contractor for health benefits shall enroll all new enrollees in its health benefits plan(s) and mail I.D. cards to the new enrollees. In addition, contractor shall process all cancellations and termination of enrollments within 24 hours of the electronic data transmission.

Between the dates that the EUTF makes the electronic data transmissions, the EUTF may request the contractor to perform new enrollments or other changes to enrollment. Contractor shall accept such requests and perform the requested enrollments or other changes in a timely manner. New enrollments shall be performed no later than fifteen (15) calendar days after receipt of the EUTF's request.

7. Provision of Information/Telephone Access

Contractor shall have knowledgeable staff available to answer inquiries from EUTF staff and EUTF employee-beneficiaries and dependent beneficiaries regarding: (1) the benefits provided by contractor; (2) contractor's benefit plans, forms, and procedures; (3) enrollment status; (4) premium costs; (5) claims and claim procedures; (6) COBRA; and (7) other matters pertaining to the benefit plans provided under the contract. If contractor does not maintain neighbor island offices, contractor shall provide a toll-free telephone line to answer such inquiries. Contractor's office and the toll-free telephone line shall be open during all State of Hawaii business hours.

At its own cost, contractor shall draft, print, and regularly update written information that describes its benefit plan in detail and a list of its providers. Upon request, the written information and list shall be provided to the EUTF's employee-beneficiaries and dependent-beneficiaries.

8. Open Enrollment

Each year, the EUTF holds at least one open enrollment period. Historically, this begins in April. The EUTF may also hold special open enrollment periods during other times of the year.

Prior to open enrollment periods, the Administrator solicits summary benefit plan information from all contractors that explain and update their benefit plan coverages, exclusions, limitations, service locations, networks and mail order providers, HMO health centers, etc. The Administrator then coordinates the publishing and distribution of benefit plan booklets, news bulletins, notices, enrollment applications, and other forms related to the open enrollment. Contractor shall provide all information requested by the Administrator in a timely fashion.

During the open enrollment period, the EUTF holds various informational sessions for employee-beneficiaries and dependent-beneficiaries. At its own cost, contractor shall provide staff and written informational materials for such informational sessions.

Contractor shall provide any other assistance as may be reasonably requested by the administrator in connection with any open enrollment period; provided that contractor shall not be required to incur any costs or expenses beyond that contemplated by its proposal or required under the contract.

9. Other Enrollment Assistance

From time to time, the EUTF may hold training sessions for its staff and/or other government personnel involved in EUTF operations, e.g., the public employers' departmental personnel officers. In addition, the EUTF holds informational meetings at various places around the State of Hawaii for its employee-beneficiaries and dependent beneficiaries, e.g., periodic pre-retirement and retirement informational meetings for employees, and informational meetings for employees facing a reduction in force. At its own cost, contractor shall provide staff and written informational materials for these training sessions and informational meetings.

Upon request and at no additional cost to the EUTF, contractor shall provide information to the EUTF necessary to update its eligibility and enrollment files, e.g., current addresses of employee-beneficiaries.

10. Coordination of Benefits/Medicare Claims

Contractor shall provide all services necessary to coordinate benefits ("COB") between its health benefits plans (or any self-insured plans it administers on behalf of the EUTF) and other health benefit plans of the EUTF's employee-beneficiaries and dependent-beneficiaries. It will be the responsibility of the contractor to pursue 100% compliance with disclosure of COB information from participants. In addition, the contractor shall on behalf of the EUTF perform all services necessary to reconcile reimbursement claims made by Medicare to the

EUTF or any public employer that arise with respect to contractor's health benefits plans (or any self-insured plans it administers on behalf of the EUTF).

11. Reports and Accountings

All reports that the contractor is required to give to the EUTF under the contract shall be in form and substance reasonably satisfactory to the EUTF. Upon reasonable advance notice, the EUTF may require changes in the form of the reports or may request that the reports contain different or additional information.

Contractor shall provide monthly operation reports to the EUTF. The monthly operations reports shall initially be in a letter format and each report shall be due on or before the 10th day of the month following the month that is the subject of the report. The monthly operations reports shall include information including, but not limited to, the following: (1) operational issues pertaining to EUTF members participating in the contractor's plans such as member mailings or network changes; (2) issues raised by or with the contractor and correspondence to or referred to the contractor; (3) publications or press releases relating to the contractor's plans that may be of interest to EUTF members; (4) community activities relating to the contractor that may be of interest to the EUTF members; (5) any legal actions or proceedings involving EUTF members; and (6) any complaints by EUTF members to the contractor or the Insurance Division relating to the contractor's plans or the contractor's administration of EUTF self-insured plans.

Contractor shall provide monthly reports on financial operations in hard copy and electronically. The monthly financial reports shall be due on or before the 10th day of the month following the month that is the subject of the report.

Contractor shall provide quarterly reports on performance standards in hard copy and electronically. The quarterly reports shall be due on or before the 30th day following the end of the quarter that is the subject of the report. Contractor shall also provide quarterly financial reports by bargaining unit.

Contractor shall provide an annual plan performance report with the incurred and paid accounting report within 120 days after June 30 of each plan year as well as any recommendations to improve the plan design or plan administration. The report shall be provided in hard copy and electronically. There shall be two (2) separate reports, one for actives and one for retirees. The retiree report shall be split between Medicare and non-Medicare retirees.

Upon request, contractor shall provide to the EUTF a report containing information on all claims received and/or processed by contractor during a specified period of time. Such a report shall be provided on a hard copy and diskette or CD.

Upon reasonable advance notice, the EUTF may request special reports on matters pertaining to contractor's benefit plans and/or contractor's performance of the contract.

12. Confidential Information

Contractor shall protect all information, records, and data collected in connection with this contract from unauthorized disclosures. The EUTF and contractor shall determine if and when any other party may have authorized access to such information.

Contractor shall guard the confidentiality of participant information. Access to participant information shall be limited by contractor to persons or agencies that require the information in order to perform their duties in accordance with the contract. Any other party shall be granted access to confidential information only after compliance with the requirements of all federal, state, and county laws pertaining to such access, e.g., HIPAA.

Contractor is required to know and understand the confidentiality laws that pertain to its benefit plan and its performance of the contract. This includes knowledge and understanding of laws specific to certain groups (i.e., HRS chapter 577A relating to minor females and pregnancy and family planning services, HRS §325-101 relating to persons with HIV/AIDS, HRS §334-5 relating to persons receiving mental health services, and 42 CFR Part 2 relating to persons receiving substance abuse services).

Nothing in this section shall prohibit the contractor from disclosing information to the EUTF or its designee.

13. Electronic Data Transmissions

Contractor shall have hardware, software, and systems that are capable of picking up or receiving electronic data transmission from the EUTF regarding enrollments, changes to enrollments, premiums, and other matters related to the contract.

Contractor shall accept the EUTF's HIPAA-compliant, semi-monthly electronic data transmissions as the official membership eligibility/enrollment records, subject to adjustments as authorized by the EUTF.

14. Payment to Contractor

Payment to contractor will be done in arrears, after the month is completed. Such payments shall be made by the 15th day of the following month. If the 15th day of the month falls on a weekend or holiday, the payment will be made on the next succeeding weekday that is not a holiday.

For purposes of calculating the amount of premiums or fees due the contractor, the number of employee-beneficiaries enrolled in contractor's plans shall be determined as of a given date of the month, to be selected by the administrator. Retroactive additions and terminations shall be accounted for in future payments.

Contractor shall accept the monthly summary enrollment reports provided by the EUTF as the basis for the amount of premiums due the contractor under the contract. Contractor shall notify the EUTF in writing within ninety (90) calendar

days after the end of the report month of any transaction or premium computation discrepancy or other problem in the monthly summary report. The contractor shall provide specific information that is necessary to resolve any noted discrepancy or problem. If the EUTF is not notified in writing within the ninety (90) days, the EUTF reports shall be considered as final and accepted by the contractor.

15. Availability of Funds

The contract shall be enforceable only to the extent that funds are available to the EUTF to make payments to contractor. All payments to contractor are subject to the EUTF's actual and continuing availability of funds. No damages or interest shall accrue against the EUTF, the State, the counties, or any other public employer as a result of the non-availability of funds.

Contractor acknowledges that the funds available to the EUTF come from public employer and employee-beneficiary contributions. With respect to retirees, HRS chapter 87A establishes the amount of the public employer contributions. However, with respect to active employees, the public employer contributions are generally established by collective bargaining between the public employers and public sector unions, and such contributions are subject to appropriation by the legislative bodies of the State and counties. See HRS §§ 87A-32, 89-9(a), 89-9(e), 89-10(b), and 89-11(g). Thus, a significant portion of the EUTF's availability of funds is contingent upon future collective bargaining between the public employers and public sector unions, the terms of any resulting collective bargaining agreements, and future appropriations by the legislative bodies of the State and counties.

The EUTF shall have the following rights should there not be available funding for contractor's contract: (a) to cancel the award of contract; (b) to renegotiate the award of contract to purchase reduced or modified services; (c) to delay the commencement date of the contract; or (d) to terminate part or the entire contract.

16. Optional Extension Periods

At its sole discretion, the EUTF shall have: (a) two separate options to extend the contract for additional one (1) year terms; and (b) one option to extend the contract for an additional two (2) year term. The EUTF may exercise the first option for a one-year extension or the option for a two-year extension by giving written notice to the contractor at least sixty (60) calendar days prior to the expiration of the initial term of the contract. The EUTF may exercise the second option for a one-year extension by giving written notice to the contractor at least sixty (60) calendar days prior to expiration of the first one-year extension of the contract.

For insured proposal, the premiums for any optional extension periods shall be negotiated based on the following formula:

[12-month claim base adjusted by trend rate] + [retention]

Contractors that do not use experience rating (such as community rating with rate adjustment factors) should use the alternative that was proposed in their proposal as accepted by the EUTF and/or required in the contract.

To the extent that rates, premiums, or other matters negotiated under the contract are subject to federal or state regulation or approval, the contractor shall follow such regulations and obtain such approvals. In the event that changes or adjustments to rates, premiums, or other matters are required to comply with federal or state regulation or to obtain federal or state approvals, the contractor shall make such changes or adjustments; provided, however, that if the changes or adjustments increase rates or premiums to the EUTF, the EUTF shall have the option of renegotiating the rates, premiums and award of contract, canceling the award of contract, or terminating the contract.

17. Health Benefit Plan Tiering Structure

This RFP requests rates on a two-tier basis (single and family). However, priority listed offerors or offerors selected for an award of contract will be required to calculate and offer three-tier and four-tier rate structures that generate equivalent total premiums. The outcome of collective bargaining shall determine the number of tiers for each contractor's health benefit plan(s). This may or may not require different tiers for different bargaining units. In their proposal, offerors must identify any and all costs involved or constraints applicable to their offering different tiering structures, including, but not limited to, whether the offeror can offer different tiering structures for different bargaining units and whether there would be increased premiums or additional costs therefore. Offerors also must be prepared to show the EUTF that the offeror's three-tier or four-tier rate structures will generate equivalent premiums. Unless otherwise advised by the EUTF, the four-tier rate structure will be: single employee, single employee plus one or more children, employee plus spouse, and family (employee + spouse + one or more children).

18. Retrospective Payment Agreement/Minimum Premium Plan/Flexible Funding

If agreed to by contractor, the contract for an insured plan may include a retrospective premium agreement equal to 5% or 10% of the contractual premium.

Under a 5% retrospective premium agreement, the premiums actually paid to contractor for each month of the contract will be ninety-five percent (95%) of the premiums due for that month. If the annual accounting reveals that claims and retention exceed ninety-five percent (95%) of the premiums due for the plan year that is the subject of the accounting, the EUTF will pay contractor the amount of that excess up to the withheld five percent (5%). However, in no event shall the EUTF be liable under the contract for any excess amounts that exceed the withheld five percent (5%).

Alternatively, if agreed to by contractor, the contract for an insured plan may be on a minimum premium basis. Under a minimum premium plan, the EUTF will pay the contractor for administrative expenses (aka retention) each month and will also pay for paid claims periodically up to a certain maximum amount as

agreed upon between the contractor and the EUTF. This type of arrangement is usually called flexible funding when applied to life insurance.

19. Experience Rating

Provision of health benefit plan services is to begin July 1, 2007

If, in a plan year (July 1 through June 30), earned premium under an insured plan exceeds total charges (net incurred and paid claims plus retention and the incurred reserve), the surplus will be held in a rate stabilization reserve ("RSR") or, at the option of the EUTF, the entire surplus will be refunded to the EUTF for each specific plan year at the time of the annual accounting. Should a deficit result in the first plan year, the contractor may carry the deficit forward and reduce any surplus from any extension years. Should a surplus result in the first plan year and be put in an RSR, and a deficit results in the second plan year, the surplus in the RSR including any interest thereon may be used to reduce the deficit. Accounting will be separate for active employees and retirees; the surplus of one group will not be used to offset the deficit of the other. Upon termination of the contract or expiration of the contract term: (1) any surpluses will be returned to the EUTF, and (2) the EUTF will not be liable for any deficits. Interest will be paid on reserves held either in an RSR or being returned to the EUTF beginning 120 days after the plan year until the date the surplus is returned to the EUTF.

The EUTF is willing to consider non-experience rated plans.

20. Performance Standards And Guarantees

All contracts will include the following performance standards:

Respond to 95% of written inquires within 20 calendar days
Resolve 95% of written inquires within 30 business days
Resolve 95% of telephone inquires within 1 calendar day
Maintain an Average Speed of Answer of 30 seconds or less
Maintain call abandonment rate below 5%
Respond to 95% of Trustee, Administrator and Professional inquires within 10 calendar days
Process 99% of appeals within 60 calendar days
Process 99% of claims within 30 calendar days
Achieve 99% Financial Accuracy
Achieve 95% Coding Accuracy

Health benefit contracts also will include the following performance standards:

Achieve a minimum of 90% satisfaction on annual surveys
Issue 100% of ID cards within 15 calendar days
Maintain network turnover below 5%

The intent of the performance standards is to measure response time, not resolution time, but inquiries that are resolved at the initial point of contact should be included in both the numerator and denominator when calculating percentages. The standard for Professional inquiries refers to inquiries from the Attorney General's office, the Consultant or any other professional hired by the EUTF. The standard related to appeals refers to member appeals, not provider appeals.

The contract will contain the following performance guarantees for all coverages other than HMO:

<b>Guarantee</b>	<b>Penalty</b>	<b>How Measured</b>	<b>Frequency</b>
Achieve a minimum of 99% financial accuracy.	1% of Quarterly Premium	Self-reported, based on internal quality review audits; verified periodically by outside audits. [Dollars Paid – overpayments – underpayments] divided by [Dollars Paid].	Quarterly
Process 99% of claims within 30 calendar days.	1% of Quarterly Premium	Self-reported, based on system reports; verified periodically by outside audits	Quarterly
Answer 90% of calls within 30 seconds	1% of Annual Premium	Operations reports	Annual

Any penalty will be tripled if it is the result of an audit that finds erroneous self-reporting of meeting a standard. Results should be reported rounded to the nearest percentage point; for example, 89.6% should be reported as 90%.

The contract will contain the following performance guarantees for HMO coverage:

<b>Guarantee</b>	<b>Penalty</b>	<b>How Measured</b>	<b>Frequency</b>
Achieve 90% overall satisfaction with health plan	1% of Annual Premium	Consumer Assessment of Health Plans (CAHPS) survey	Annual
Answer 90% of calls within 30 seconds	1% of Annual Premium	Operations reports	Annual
Exceed state average for asthma management	1% of Annual Premium	Health Plan Employer Data and Information Set (HEDIS)	Annual

These standards and guarantees shall apply unless the contractor specifically submits and the EUTF accepts a counter proposal.



21. HIPAA (Health Benefit Contractor Obligations)

With respect to all information and transactions related to or that arise out of the contract or contractor's performance of the contract, contractor shall comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 and the rules passed thereunder, including those dealing with privacy, security, and electronic transactions (collectively "HIPAA").

At no additional cost to the EUTF, the contractor shall assist the EUTF in meeting any requirements or performing any obligations that the EUTF is obliged to meet or perform under HIPAA. This includes but is not limited to: (1) providing access to protected health information ("PHI") in accordance with 45 C.F.R. §164.524; (2) making PHI available for amendment in accordance with 45 C.F.R. §164.526; (3) providing information necessary for the EUTF to respond to a request for an accounting in accordance with 45 C.F.R. §164.528; and (4) making contractor's practices, books, and records available to the Secretary of Health and Human Services as required to determine the EUTF's compliance with HIPAA. PHI shall have the meaning set forth in 45 C.F.R. §164.501.

At no additional cost to the EUTF, contractor shall provide the services specified below with respect to the issuance of certificates of creditable coverage as required by HIPAA. The contractor shall:

- a) Prepare and mail a certificate of creditable coverage:
  - i) When a plan member (including a covered dependent) has incurred a loss of coverage and is entitled to elect COBRA continuation coverage under the plan;
  - ii) When a plan member (including a covered dependent) who has elected COBRA continuation coverage has terminated such coverage;
  - iii) Upon receipt of a request from a plan member (including a covered dependent), or upon notice from the EUTF that the plan member has requested the EUTF to provide a certificate, if the plan member's request was made within 24 months after a loss of coverage was incurred.
- b) Maintain copies of certificates of creditable coverage issued to plan members for a period of not less than two years.
- c) Answer inquiries from plan members relating to certificates of creditable coverage.

A contractor awarded a contract to administer an EUTF self-insured plan (under an administrative service agreement or otherwise) shall be required to enter into a business associate agreement with the EUTF in the form attached to this RFP in Appendix G.

22. COBRA and USERRA (Health Benefit Contractor Obligations)

Health benefit contractors shall assist the EUTF in meeting its responsibilities under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") and the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA").

The EUTF will distribute the general COBRA notices at the time of eligibility and send COBRA notices at the time of a qualifying event. The contractor shall administer COBRA for anyone who elects COBRA continuation coverage.

At no additional cost to the EUTF, the contractor shall provide the following services. The contractor shall:

- a) Directly bill and collect premiums including any applicable service charges from individuals;
- b) Maintain eligibility information and reconcile individual accounts;
- c) Distribute and process COBRA notices other than the general and election notices when required;
- d) Answer inquiries from former employee-beneficiaries and dependent-beneficiaries who continue plan coverage under COBRA or USERRA provisions and handle subsequent open enrollments for such persons;
- e) Prepare reports for the EUTF on COBRA and USERRA cases.

23. QMCSOs (Health Benefit Contractor Obligations)

At no additional cost to the EUTF, health benefit contractors shall assist the EUTF in meeting its obligations with respect to Qualified Medical Child Support Orders ("QMCSOs") and shall provide the following services:

- a) Mail benefit checks to the alternate recipient or designated custodial parent or court appointed guardian when required under the terms of the Plan and the QMCSOs.
- b) Answer inquiries from alternate recipients or designated court-appointed guardians who receive benefits under the Plan.

24. Patient Billing (Health Benefit Contractor Obligations)

Health benefit contractors shall ensure that no contracted provider in its network bills EUTF employee-beneficiaries or dependent-beneficiaries for more than the stipulated deductible or coinsurance portion of the allowable fee for a service.

25.     Everson Lawsuit

The EUTF reserves the right to renegotiate any and all awards of contract and/or contracts resulting from this RFP if necessary to comply with any orders or judgments entered in the pending lawsuit described in Section 1.19 of this RFP.

## SECTION FOUR

### PROPOSAL EVALUATION AND EVALUATION CRITERIA

#### 4.01 INTRODUCTION

All Trustees on the Board will serve on the Evaluation Committee for this RFP.

Under this RFP, the EUTF is considering both insured plans and self-funded or self-insured plans. As described in Section 1.10 of this RFP, the Evaluation Committee may separately evaluate and create separate priority lists for insured plans and self-insured plans. The Evaluation Committee may also separately evaluate and create separate priority lists for different types of insured plans (e.g., fully insured plans and minimum premium plans). During the evaluation process, the EUTF may decide to limit its consideration to either insured or self-insured plans for one or more categories of benefits plans or to limit its consideration to certain types of insured plans. All priority-listed offerors in the applicable category(s) will be notified of such decisions by an amendment to the RFP and will be invited to amend their proposals.

Evaluation criteria that will be used by the Evaluation Committee and the associated points are listed below. The award of contract will be made to the responsible offeror whose proposal is determined to be responsive and the most advantageous to the EUTF based on these evaluation criteria.

#### 4.02 EVALUATION CRITERIA

##### 1. Health Benefits

		Points
1.	Financial Stability	Pass/Fail
2.	Completeness/Clarity of Proposal/Conciseness	5
3.	Benefits Offered	5
4.	Rates/Fees	45
5.	Quality of Services	20
6.	Performance Standards	5
7.	Funding & Cost-Related Factors	10
8.	Similar Group Experience	10
	Total Possible Points	100

## 2. Life Insurance

		Points
1.	Financial Stability	Pass/Fail
2.	Completeness/Clarity of Proposal/Conciseness	5
3.	Benefits Offered	70
4.	Quality of Services	5
5.	Performance Standards	5
6.	Funding & Cost-Related Factors	5
7.	Similar Group Experience	10
	Total Possible Points	100

### 4.03 EXPLANATION OF EVALUATION CRITERIA

#### 1. Financial Stability

The financial stability of the offeror will be assessed in relationship to the size and scope of the project. Financial stability will be determined based on the following factors: 1) ratings by applicable rating services, 2) size of the offeror's total assets, 3) ratio of the offeror's assets to liabilities, and 4) the nature and extent of the offeror's liabilities. In addition, any pending legal and regulatory actions will be considered.

#### 2. Completeness/ Clarity of Proposal/Conciseness

Points will be awarded based on the following factors: (1) the extent to which a proposal clearly and unequivocally offers to provide all services requested in the RFP; (2) the extent to which a proposal clearly and unequivocally agrees to abide by all the terms and conditions in the RFP that pertain to the provision of the requested services; (3) the extent to which the proposal creates any ambiguities or leaves open questions as to whether the offeror is agreeing to abide by all the contractual and legal requirements stated in the RFP. Offerors should note that lack of clarity or conciseness in their proposals may result in lesser points being awarded. Thus, lesser points may be awarded if an offeror: fails to fully and clearly answer applicable questions in the RFP; fails to provide all information, references, lists, certifications, statements and documents requested in the RFP; or fails to comply with the form and technical requirements for submission of proposals stated in the RFP.

#### 3. Benefits Offered

For insured health proposals, points will be awarded to proposals based on the nature and extent of benefits offered, i.e., the nature and extent of covered expenses and exclusions. Points will be awarded to proposals that have the most favorable benefits offered and points will be deducted from proposals based on the number and nature of exclusions. For administrative services proposals related to self-insured plans, maximum

points will be awarded to offerors that can administer the plan designs requested in this RFP.

For life insurance proposals, points will be awarded based on the amount of life insurance offered for \$4.12 per employee/retiree per month. The basis of the comparison will be the total volume of insurance offered. The maximum number of points will be awarded to the offeror proposing the highest volume of insurance and other proposals shall receive points in proportion to the highest proposal (i.e., a proposal with half the life insurance volume of the highest proposal would receive half the available points).

4. Rates/Fees

The maximum number of points will be awarded to the offeror proposing the lowest rates or fees within each category of benefits and the other proposals shall receive points in proportion to the lowest proposal (i.e., a proposal with double the cost of the lowest proposal would receive half the available points). To facilitate the comparison of proposals, points will be awarded based on the rates/fees quoted for the current plan designs (i.e., plan designs equivalent to the current EUTF plans), even though an offeror's alternative plan design ultimately may be selected by the EUTF. Rates for the current plan design will be multiplied by the current enrollment figures provided in this RFP to determine a total monthly premium for each offeror for each category of benefits.

5. Quality of Services

Points will be awarded based on the following factors: (1) if applicable, the size, stability, quality, and geographic coverage of offeror's provider network and the nature of the offeror's provider credentialing, monitoring, and complaint processes; (2) the nature and quality of the customer services that offeror is proposing to provide; (3) the nature and quality of offeror's claims processing, including the speed and accuracy of its claims processing, the size and experience of its claims processing staff, the capabilities of its claims processing systems and equipment, and the location of its claims office; (4) the nature and extent of offeror's quality assurance procedures and activities, including its patient appeals process and disease management programs; (5) offeror's willingness and ability to provide all reports and reporting required under the RFP and the cost of any additional reporting; and (6) if applicable, the nature and quality of offeror's drug utilization review. References will be a factor in evaluating quality of services.

6. Performance Standards

The maximum number of points will be awarded to proposals that expressly and unequivocally accept all of the performance standards and guarantees set forth in the RFP. A lesser number of points will be awarded for proposals that don't expressly or unequivocally accept all of the performance standards and guarantees, or that propose alternate

standards and guarantees that the Board considers to be unsatisfactory, or that refuse or indicate an inability to meet any of the performance standards or guarantees.

7. Funding & Cost-Related Factors

Points will be awarded based on the following factors: (1) the offeror's willingness to be flexible in funding, payment, and other plan matters; and (2) the potential for the offeror's proposal to result in cost savings (other than directly through fees or premiums) to the EUTF. For example, points may be awarded for offerors willing to enter into retrospective premium agreements, or to offer either bundled and unbundled plans, or to offer different tiering structures on favorable terms. In addition, points may be awarded based on the duration of any rate guarantees proposed by offeror, the amount of offeror's proposed retention, the amount of offeror's trend rate for the optional extension period, the offeror's cost containment programs, or the creative suggestions proposed by offeror that may be of benefit to the EUTF.

8. Similar Group Experience

Points will be awarded based on whether the offeror has provided the same or similar services to clients similar to the EUTF (government or large clients), including the number and nature of such clients, and the extent to which the offeror has provided such services in the past. More points will be awarded to offerors who have provided the same or similar services to a large number of similar clients. A lesser number of points will be awarded to offerors that have provided similar services to only a few or no similar clients or have not provided similar services to similar clients.

**4.04. Additional Information Regarding the Evaluation Process**

- A. Separate Evaluations and Separate Priority Lists. The Evaluation Committee's evaluation of proposals will depend on the number and types of proposals submitted. As described in Section 1.10 of this RFP, the Evaluation Committee may separately evaluate and create separate priority lists for different categories and types of proposed health and other benefit plans. In addition to separate evaluations and priority lists for different categories of health benefits plans (e.g., PPO plans, HMO plans, dual coverage plans, supplemental plans, high deductible health plans, prescription drug plans, dental plans, vision plans, and chiropractic plans), the Evaluation Committee may separately evaluate and create separate priority lists for different types of bundled and unbundled plans, fully insured plans, minimum premium plans, and self-insured plans or services.
- B. Possible Amendment of the RFP. During the evaluation process, the EUTF may decide to limit its consideration to fully insured plans, minimum

premium plans, or self-insured plans or services for one or more categories of its health benefits plans. All priority-listed offerors in the applicable categories will be notified of such decision by an amendment to the RFP and will be invited to amend their proposals.

C. Evaluation of Bundled and Unbundled Plans. The Evaluation Committee will use the following steps to evaluate bundled versus unbundled plans.

1. Using the separate evaluation process described above, the Evaluation Committee will determine: (a) the highest scoring bundled plan, and (b) the highest scoring unbundled plan for each category of benefits covered by the highest scoring bundled plan.
2. The Evaluation Committee will subtract from the total score awarded to each plan (identified in step 1), the score awarded to that plan for Rates/Fees.
3. After subtracting the points for Rates/Fees, the remaining score (the "adjusted points") for each unbundled plan will be averaged, i.e., the adjusted points for each unbundled plan will be added together and divided by the number of unbundled plans.
4. The proposed Rates/Fees for each of the unbundled plans will be added to reach a total of Rates/Fees for the unbundled plans. Using this total, points for Rates/Fees will be awarded to the unbundled plans versus the bundled plan based on the system set forth in item 4 of Section 4.03 of this RFP.
5. The points remaining for the bundled plan after subtraction for Rates/Fees (step 2) will be added to the points for Rates/Fees awarded to the bundled plan (step 4), and the average of the adjusted points for unbundled plans (step 3) will be added to the points for Rates/Fees awarded to the unbundled plans (step 4).
6. Based on step 5, the highest scoring overall proposal will be determined between the highest scoring bundled versus unbundled plans.

The Evaluation Committee may evaluate different combinations of bundled and unbundled plans against each other using the steps described above, the intent being to determine which proposals are most practicable and advantageous to the EUTF and its members. Further, as noted in Section 3.01 of this RFP, the EUTF may take a "managed competition" approach and award contracts to bundled and unbundled plans on a non-exclusive basis.

For illustration purposes, an example of how a bundled plan might be evaluated against unbundled plans is set forth in Appendix N.



**SECTION FIVE**

**CONTRACT AND GENERAL CONDITIONS**



**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED PROPOSALS**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_,  
(Insert name of state department, agency, board or commission)  
State of Hawaii ("STATE"), by its \_\_\_\_\_,  
(Insert title of person signing for State)  
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is \_\_\_\_\_ and \_\_\_\_\_  
("CONTRACTOR"), a \_\_\_\_\_  
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)  
under the laws of the State of \_\_\_\_\_, whose business address and federal and state taxpayer identification numbers are as follows: \_\_\_\_\_

**RECITALS**

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to \_\_\_\_\_, the STATE  
(Legal authority to enter into this Contract)  
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) \_\_\_\_\_  
(Identify state sources)

or (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts: State \$ \_\_\_\_\_  
Federal \$ \_\_\_\_\_

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number \_\_\_\_\_ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

### STATE

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

### CONTRACTOR

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

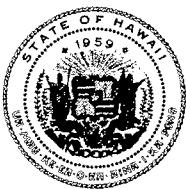
\_\_\_\_\_  
(Date)

CORPORATE SEAL  
(If available)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Attorney General

\* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS.  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me appeared  
\_\_\_\_\_ and \_\_\_\_\_, to me  
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are  
\_\_\_\_\_ and \_\_\_\_\_ of  
\_\_\_\_\_, the  
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said  
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said  
instrument as the free act and deed of the CONTRACTOR.

(Notary Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_



# STATE OF HAWAII

## CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is\* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

### CONTRACTOR

By \_\_\_\_\_

(Signature)

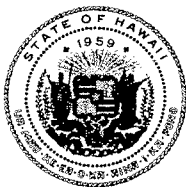
Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_

\* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).



## STATE OF HAWAII

**CERTIFICATE OF EXEMPTION  
FROM CIVIL SERVICE****1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).\***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Date)\_\_\_\_\_  
(Print Name)\_\_\_\_\_  
(Print Title)

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

**NOTE:** Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

**2. By the Director of DHRD, State of Hawaii.**

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Date)\_\_\_\_\_  
(Print Name)\_\_\_\_\_  
(Print Title, if designee of the Director of DHRD)

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.



3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
  - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
    - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
    - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
    - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
  - c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing

agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
  - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
    - (1) Cancel the stop performance order; or

- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
  - (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement

officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
  - (1) Any completed goods or work product; and
  - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such

officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
  - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
  - c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:
- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
  - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
  - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
  - (A) Changes in the work within the scope of the Contract; and
  - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
  - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
  - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
  - d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.



21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
- (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;
  - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit

or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one

provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

## **APPENDICES**

APPENDIX A:	2005 ANNUAL REPORT OF EUTF
APPENDIX B:	LETTER OF INTENT
APPENDIX C:	QUESTIONS FOR OFFERORS
APPENDIX D:	RATE PROPOSAL FORMS
APPENDIX E:	OFFER FORM OF-1
APPENDIX F:	WAGE CERTIFICATION
APPENDIX G:	HIPAA BUSINESS ASSOCIATE AGREEMENT
APPENDIX H:	GARNER CONSULTING ANNUAL REPORTS
APPENDIX I:	FY06 UTILIZATION REPORTS
APPENDIX J:	CENSUS DATA (AS OF JULY 1, 2006)
APPENDIX K:	CHAPTER 87A (HRS) AND CHAPTER 87D (HRS)
APPENDIX L:	EUTF ADMINISTRATIVE RULES (AS AMENDED)
APPENDIX M:	EUTF REFERENCE GUIDES
APPENDIX N:	ILLUSTRATION OF EVALUATION OF BUNDLED VS. BUNDLED PROPOSALS